

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES A. BIGGINS,	§
	§
Defendant Below-	§ No. 132, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
CARL DANBERG, <i>et al.</i> ,	§ in and for Kent County
	§ C.A. No. 08C-12-025
Plaintiff Below-	§
Appellee.	§

Submitted: June 25, 2010
Decided: August 24, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 24th day of August 2010, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, James Biggins, filed this appeal from a Superior Court order dated January 27, 2010. The trial court's order granted a motion filed by defendant below, Correctional Medical Services, to revoke a prior court order granting Biggins' leave to file his complaint *in forma pauperis*. The Superior Court's order further provided that Biggins had until March 1, 2010 to pay the required filing fees or else his complaint would be dismissed. Biggins failed to pay the fees. This appeal ensued.

(2) The record reflects that Biggins filed his complaint on March 6, 2009 against various officials and employees of the Department of Correction (the DOC) and the DOC's medical provider, Correctional Medical Services (CMS). Biggins' complaint alleged that, in December 2008, he had been placed in isolation for two days and denied access to medicine for his various medical conditions, including sickle cell disease, scoliosis, migraines, acid reflux disease, back pain, and bleeding ulcers. Biggins also alleged that the DOC's employees served him polluted water and engaged in unsanitary procedures and failed to wear proper protection when preparing and serving food. He also alleged that the DOC failed to provide proper heat. Biggins sought both compensatory and punitive damages for these alleged violations of his Eighth and Fourteenth Amendment rights.

(3) Biggins' filed a motion to proceed *in forma pauperis*. The Superior Court granted that motion. Thereafter, CMS filed a motion to revoke Biggins' *in forma pauperis* status, alleging that Biggins, while incarcerated, had filed three or more prior actions that were dismissed because they were frivolous or failed to state a claim. Moreover, CMS alleged, Biggins had failed to establish that he was in imminent danger of serious physical injury in order to proceed *in forma pauperis*.¹

¹ Del. Code Ann. tit. 10, § 8804(f) (Supp. 2008). Section 8804(f) provides that any inmate who, while incarcerated, has had three or more prior complaints dismissed for being frivolous or

(4) Upon consideration of the motion, the Superior Court found that Biggins had filed at least eight prior complaints while incarcerated that had been deemed frivolous or had been dismissed for failing to state a claim upon which relief could be granted.² The court further found that Biggins' most recent complaint was based upon an incident that had happened several months prior to the filing of his complaint. Therefore, Biggins could not establish that he was "under imminent danger of serious physical injury at the time that [his] complaint [was] filed."³

(5) After careful consideration, we hold that the Superior Court's factual findings are supported by the record. Accordingly, we find no error or abuse in the Superior Court's revocation of Biggins' *in forma pauperis* status.⁴ Moreover, we find no abuse of discretion in the dismissal of Biggins' complaint for failure to pay the required fees.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

failing to state a claim may not file another complaint *in forma pauperis* unless the inmate is "under imminent danger of serious physical injury at the time the complaint is filed."

² See *Biggins v. Phelps*, Del. Super., C.A. No. S08M-12-018, Graves, J. (Jan. 7, 2009).

³ Del. Code Ann. tit. 10, § 8804(f) (Supp. 2008).

⁴ See *Biggins v. Phelps*, 2009 WL 2055128 (Del. Supr. July 16, 2009).